IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

OP.No. 17384 of 1999(T)

PETITIONER:

JOHNSON PETER, FIREMAN NO.2445,
FIRE STATION, THALASSERY.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.V.VARGHESE
SMT.RESMI G. NAIR

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. COMMANDANT GENERAL, HOME GUARDS, CIVIL DEFENCE AND FIRE SERVICE, THIRUVANANTHAPURAM.

3. DIVISIONAL OFFICER (FIR FORCE), KOZHIKODE, PIN 673 018.

4. ASSISTANT DIVISIONAL OFFICER, FIRE STATION, KANNUR.

BY GOVT PLEADER SMT.SMITHA SUKUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 25/06/2007, ALONG WITH OP NO.17398 OF 1999 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.28425 OF 1999 IN OP NO.17384 OF 1999 T

//DISMISSED//

25.06.2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE MEMO OF CHARGES NO.A-14962/95-2 ND (P.R.NO.9/95) DATED 12.10.1995 OF THE 3RD RESPONDENT.

EXT.P2: TRUE COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 21.11.1995.

EXT.P3: TRUE COPY OF THE SHOW CAUSE NOTICE NO.A4-4517/96 DATED 4.6.19996 OF THE 2ND RESPONDENT.

EXT.P3(a): TRUE COPY OF THE ENQUIRY REPORT OF THE 3RD RESPONDENT.

EXT.P4: TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 22.6.1996.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.Nos.17384, 17398, 17405 &
17465 OF 1999

Dated this the 25th day of June, 2007

JUDGMENT

Petitioners were working in the Fire Force in Kannur. All of them faced disciplinary proceedings on the same counts. The allegation was that they and another committed dereliction of duty in connection with the rescue operation following an information that a person has fallen into a well. On the basis of the fact that came out of the well ultimately was the dead body, it is submitted that it was essentially a recovery action.

2. The disciplinary proceedings against the petitioners ended up in the imposition of reduction in their pay by one stage for one year, a major penalty in terms of Rule 9 (1)(v) of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960.

3. After the conclusion of the enquiry, the disciplinary authority came to the tentative decision as regards the

punishment to be imposed and directed the delinquent officials to show cause as to the proposed punishment. In answer thereto, it appears that the delinquent officials showed causes against the findings rendered against them as also on the question of the proportionality of the punishment proposed. But then, as per the impugned order of the Commandant and that on their appeal before the Government, there is apparently no consideration of the objections of the petitioners as regards sustainability of the findings of the enquiry officer. If the findings of the enquiry officer were considered by the disciplinary authority and the appellate authority with reference to the objections raised by the petitioners to such findings, the defect of any absence of pre-decisional hearing on the question of the findings, before entering on the question of imposition of punishment, would not have been there. But in the case in hand, there is no consideration of the objections as to the findings and therefore, the satisfaction of the situation by post decisional hearing has also not been rendered.

4. In the aforesaid circumstances, the impugned orders of the Government, confirming the punishment imposed on the petitioners, is set aside. The Government will, following this judgment, re-hear the petitioners on their appeals and consider their objections as against the findings of the enquiry authority as also on their objections as regards the punishment proposed to be imposed on them. Let such decision be taken after hearing the petitioners, within a period of four months from the date of receipt of a copy of this judgment. The orders regarding the period of suspension of the petitioners will also be re-considered following such hearing.

The writ petitions are disposed of with the above directions.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NOs.17384, 17398, 17405 &
17465 OF 1999

JUDGMENT

25TH JUNE, 2007.

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